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SUPREME COURT, U.S.

No. 81-5947

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

EURUS KELLY WATERS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER

SPECIMEN
ERASABLE
COTION CONTENT

165 West End Avenue
New York, New York 10023

SUPPLEMENTAL BRIEF FOR PETITIONER

In his petition for a writ of certiorari, petitioner asserted that the Supreme Court of Georgia erred in affirming his death sentence despite a finding that three of the total of six aggravating circumstances considered and found by the sentencing jury were invalid. (Point III). Petitioner's claim is directly affected by this Court's decision in Zant v. Stephens, 50 L.W. 4472 (5/3/82) remanding a case similarly involving multiple aggravating circumstances to the Supreme Court of Georgia for explanation of the state law premises of that court's view that a death sentence can stand despite invalid aggravating circumstances as long as one valid statutory factor was found.

Petitioner received a death sentence on each of two counts of murder. As to both sentences, the jury was told that it could consider as an aggravating circumstance the sodomy alleged to have been committed on one of the victims. The jury was further permitted to consider as mutually supporting aggravating circumstances the killing of each victim during the course of the killing of the other. The Supreme Court of Georgia declared the sodomy aggravating circumstance invalid as to each count, and arbitrarily eliminated one of the mutually supporting aggravating circumstances. Waters v. State, 248 Ga. 355, 283 S.E.2d 238, 250, 251 (1981). The court nonetheless affirmed the death sentences, relying on the single remaining aggravating circumstance for one count and the two aggravating circumstances found valid for the other. Id., 283 S.E.2d at 251.

Since the ultimate determination by this Court of the constitutionality of such action will be determinative of petitioner's claim, petitioner respectfully requests that his petition for

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a writ of certiorari be held in abeyance pending final decision in Zant v. Stephens.

May 14, 1982

Respectfully submitted,

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ERASABLE
— COTTON CONTENT —